IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

S.C. SUIT NO.1169 OF 1980

Rajni M.Bhagat and Anr. ..Plaintiff

Vs.

Interlighter International Shipping Co. and Ors. ..Defendants

Mr.N.K.Kamat i/b M/s.Gagrat for the plaintiffs

CORAM : S.U.KAMDAR, J
DATED : 7TH APRIL, 2006

P.C.:

1. The present suit is filed for the recovery of sum of Rs.1,87,229/- with further interest @ 18% p.a. Some of the material facts of the present case are briefly enumerated as under:

2. The plaintiff no.1 carries on business in the name and style of "Drumex Enterprisers". The plaintiff no.2 is the Insurance Company. The defendant no.1 is a foreign company. Defendant no.2 is an agent of defendant no.1 in India. It is the case of the plaintiff that sometime in or about 7.4.79, M/s.Metal Import Export carrying on

business at Bucharest, delivered to defendant no.1, a consignment of 19 packages. Defendant no.1 is a shipping company. The said consignment of 19 packages of cold rolled steel sheets weighing 76.420 metric tonnes was valued at Rs.1,87,229. The said consignment was to be delivered from the Port of Galatz/Ismail, Rumania to Bombay. The necessary freight charges were paid. Defendant no.1 was issued a clean bill of lading dt.7.4.79 indicating the delivery of the goods to defendant no.1 on board for the purpose of transportation. The said goods were to be delivered to one SAIL International Limited. The said bill of lading was for contract of carriage. The said consignment was duly insured with plaintiff no.2. Sometime in or about 9.5.79, the said company sold the said consignment on high sea sales basis to the plaintiff no.1 and after purchase of said consignment it is plaintiff who was entitled to delivery thereof. Plaintiff paid the price of the said goods to said SAIL International Limited in respect of the said consignment.

3. The said goods shipped by defendant no.1

arrived at Bombay on 4.5.79 and discharge the cargo between 1.6.79 and 4.6.79. The plaintiff appointed defendant no.5 as clearing agent for clearance of the said goods. Defendant no.5 has by letter dt.5.6.79 addressed to defendant no.2 requested to inform whereabouts of the said consignment. Defendant no.2 has by letter dt.8.6.79 informed defendant no.5 that the said consignment is lying in the shed of BPT at Princess Dock. However, the said consignment was not traceable and the Port Trust Authority was contacted. Plaintiffs also called upon defendant no.2 that in view of the fact that the goods are not traceable the defendants will be held liable. The port trust authorities ultimately by letter dt.17.12.79 addressed to defendant no.5 that the entire consignment was in fact outturned as short landed because goods never landed at the Port trust premises and thus port trust authorities denied the liability to pay. Port trust authorities has issued necessary short landing certificate dt.4.12.79 in respect of the said consignment. Some time in or about 22.10.80 the plaintiff no.2 made a payment to the plaintiff no.1 under the insurance policy towards full and

final settlement of their claim and paid to plaintiff no.1 a sum of Rs.2,16,250/- and plaintiffs has obtained letter of subrogation and thereafter impleaded themselves as party to the present suit as plaintiff no.2.

4. Suit is filed only against defendant nos.1 and 2 for recovery of Rs.1,87,229/- with interest @ 18% p.a. Both the defendant nos. 1 and 2 have filed their written statement. It has been contended by the defendants in their written statement that plaintiff is not entitled to decree because the plaintiff has not complied with the terms and conditions pertaining to notice as provided under the bill of lading. However, in so far as delivery of goods is concerned, it is not disputed that there has been no delivery of the goods to the plaintiff herein.

5. On the aforesaid pleadings issues were framed on 16.01.02 and plaintiffs no.2 has filed an affidavit of evidence of Shailesh M.Ratnaparkhi and also filed compilation of documents. Compilation of documents which are containing 8 documents are

marked Ex.A collectively. In view of the fact that defendant was not appearing on number of earlier occassions. I directed plaintiff to issue notice by my order dt.17.3.06 Accordingly, notice was issued by the advocate for the plaintiff. Xerox copy of the same is taken on record. Inspite of notice, none appears for the defendants. In view thereof, I accept the oral evidence of the plaintiff which has gone unchallenged.

6. In that light of the matter, there shall be decree in favour of the plaintiff no.2 and against the defendants for the sum of Rs.1,87,229/- with further interest @ 12% p.a. simple interest from the date of the suit till payment and / or realisation.